



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**Commonwealth Equipment of the Virginias, Inc.
Registration No. 52961**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Commonwealth Equipment, Inc., regarding its Facility located in Suffolk, Virginia, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Commonwealth Equipment" means Commonwealth Equipment of the Virginias, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Commonwealth Equipment of the Virginias, Inc. is a "person" within the meaning of Va. Code § 10.1-1300.
3. "Crusher" means the portable stone processing equipment McCloskey I4CR Compact Impact Crusher, 150 tons per hour, manufactured 2021, Serial number 77534, with single deck recirculation screen box and integrated stockpiling conveyors, powered by a 375 horsepower tier 4F diesel engine (a component of the self-propelled crusher).
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" means the crusher observed at 3061 Godwin Boulevard, Suffolk, Virginia 23434.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
10. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. On August 28, 2021, DEQ staff observed the crusher on location at 3061 Godwin Boulevard, Suffolk, Virginia. Subsequent information provided to DEQ indicated the crusher is owned by Commonwealth Equipment.
2. On August 30, 2021 and September 8, 2021, DEQ staff observed the crusher operating on location at 3061 Godwin Boulevard, Suffolk, Virginia. A review of DEQ files did not find an air permit for the crusher.
3. 9 VAC 5-80-1120(A) and 9 VAC 5-510-30 states that no owner or other person shall begin construction of, or operate, any new stationary source without first obtaining a permit.
4. 9 VAC 5-50-50(A)(1) requires that any owner or operator of a new or modified source provide written notifications of the date of commencement of construction, reconstruction, or modification of a new or modified source no later than 30 days after such date.
5. 9 VAC 5-170-160(A) states that the Board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law.
6. Va. Code § 10.1-1322(A) states that the Department has authority to issue, amend, revoke, or terminate and reissue permits, and the failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.

7. On September 1, 2021, Commonwealth Equipment submitted an air permit application to DEQ for the crusher.
8. On September 10, 2021, based on the DEQ observations on August 28, 2021, August 30, 2021, and September 8, 2021, the Department issued NOV No. APRO001955 to Commonwealth Equipment for the violations described in paragraphs C(1) through C(6), above.
9. On September 17, 2021, DEQ staff met by telephone with a representative of Commonwealth Equipment to discuss the NOV and enforcement process.
10. Based on the August 28, 2021, August 30, 2021, and September 8, 2021 DEQ observations and the air permit application submitted on September 1, 2021, the Board concludes that Commonwealth Equipment has violated Va. Code § 10.1-1322(A), 9 VAC 5-80-1120(A), 9 VAC 5-50-50(A)(1), and 9 VAC 5-170-160(A), as described in paragraphs C(1) through C(6) above.
11. On September 28, 2021, DEQ issued a Stationary Source Permit to Construct and Operate to Commonwealth Equipment for the crusher, returning Commonwealth Equipment to compliance regarding the crusher.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Commonwealth Equipment, and Commonwealth Equipment agrees to pay a civil charge of \$3,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Commonwealth Equipment shall include its Federal Employer Identification Number (FEIN) _____ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Commonwealth Equipment shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Commonwealth Equipment for good cause shown by Commonwealth Equipment, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. APRO001955 dated September 10, 2021. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any

additional, subsequent, or subsequently discovered violations, (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Commonwealth Equipment admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Commonwealth Equipment consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Commonwealth Equipment declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Commonwealth Equipment to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Commonwealth Equipment shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Commonwealth Equipment shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Commonwealth Equipment shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and

assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Commonwealth Equipment. Nevertheless, Commonwealth Equipment agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Commonwealth Equipment has completed all of the requirements of the Order;
 - b. Commonwealth Equipment petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Commonwealth Equipment.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Commonwealth Equipment from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Commonwealth Equipment and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Commonwealth Equipment certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Commonwealth Equipment to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Commonwealth Equipment.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Commonwealth Equipment voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18th day of OCT, 2021.



Craig R. Nicol, Regional Director
Department of Environmental Quality

Commonwealth Equipment of the Virginias, Inc. voluntarily agrees to the issuance of this Order.

Date: OCT 18th 2021 By: Damien Devlin 

(Person) (Title)
Commonwealth of ~~Virginia~~ ^{Maryland} Commonwealth Equipment of the Virginias, Inc.
City/County of Laurel / Prince Georges

The foregoing document was signed and acknowledged before me this 14th day of

October, 2021, by Damien Devlin who is

_____ of Commonwealth Equipment, on behalf of the corporation.


Notary Public

Registration No. _____ MI JUNG KIM
NOTARY PUBLIC STATE OF MARYLAND
My commission expires: My Commission Expires Nov 02, 2022
Notary seal: Montgomery County